U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JUL 18 2013 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the AAO on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the sciences, the arts, or business. The petitioner seeks employment as an early childhood multicultural education administrator. The petitioner indicated that she worked 15 hours per week as the executive director of the in , Maryland, which the petitioner founded in September 2011, and 35 hours per week as a volunteer at the , Maryland. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner had not established that she qualifies for the classification sought, or that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

EXCEPTIONAL ABILITY

The petitioner filed the Form I-140 petition on November 8, 2011. In an accompanying statement, counsel indicated that the petitioner claims eligibility for classification as an alien of exceptional ability in the sciences, the arts, or business.

In denying the petition on April 1, 2013, the director stated: "The evidence does not show that the beneficiary qualifies for the requested classification as a member of the professions holding an advanced degree or an alien of exceptional ability."

The petitioner, on appeal, does not contest or even acknowledge this finding. Rather, counsel's appellate brief deals exclusively with the other stated ground for denial, concerning the national interest waiver. When an appellant fails to offer argument on an issue, that issue is abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n.2. (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998). *See also Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff abandoned his claims as he failed to raise them on appeal to the AAO). Therefore, the petitioner has effectively abandoned her claim of exceptional ability.

With no finding that she qualifies for the underlying immigrant classification, the petitioner cannot qualify for the national interest waiver. Nevertheless, counsel's assertions on appeal relate solely to national interest waiver claims. Accordingly, the AAO will address this issue below.

NATIONAL INTEREST WAIVER

The remaining issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope.

Finally, the petitioner must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

In an introductory statement, counsel asserted that immigrant children and many United States-born children of immigrants face economic, linguistic, and other barriers that can place them at a disadvantage in relation to other children. This statement attests to the substantial intrinsic merit of the petitioner's occupation.

Regarding the petitioner's qualifications for the waiver, counsel stated:

> Media coverage, professional awards and qualified experts recognize [the petitioner] as an exceptional early childhood educator whose abilities have significantly benefited the nation and who will serve the national interest to a substantially greater extent than would American workers similarly qualified. . . .
>
> If labor certification were required in this case, the national interest would be adversely affected. The anticipated benefits from [the petitioner's] work depend on her proven record of achievement and her unique and innovative skills, knowledge and background. The experts who have written on [the petitioner's] behalf explain that more than mere minimum qualifications are required to succeed in the critical research projects on which she works. Labor certification is a standardized process relating to minimum requirements of education and experience. This process will not take into account the many essential qualities that [the petitioner] possesses which are clearly vital to the national interest. . . . Unquestionably, she will serve the nation to a substantially greater degree than anyone with minimum qualifications.

On ETA Form 750-B, Statement of Qualifications of Alien, the petitioner listed her duties at the LCAGW: "Conduct core knowledge training to childcare providers to Latino children in the

metropolitan area; provide professional support activities through mentoring & monthly meetings." The petitioner also described her duties with a previous employer, the Maryland:

> Plan, implement & oversee all ongoing programs & special projects aimed at Latino & other low-income/low English proficiency immigrant families through early childhood education, advocacy, workforce training, small business development, women's leadership & community building; manage private & government funded instructional, educational & leadership development programs including childcare centers, women's groups, parents' training & support & community outreach programs.

The petitioner submitted several witness letters with the initial filing of the petition. Two of the witnesses, Dr. and , work with the petitioner at , a social service provider that does not appear to be directly involved in early childhood education. Their letters do not address the petitioner's work in early childhood education, which is the principal basis for the waiver claim.

director of stated:

> Before becoming an administrator I . . . served as an Education Policy Analyst and as an Associate Director of
>
> I came to know [the petitioner's] work while involved in a National Council of La Raza study that examined the gaps in Early Childhood Education and services for US born children of immigrants. . . .
>
> [The petitioner's] work at speaks to these issues directly and shows a track record of success. [The petitioner's] work and expertise includes leading efforts in curriculum design, workforce development and family support. This resulted in being recognized as a model on how to implement Early Childhood Programs helping children of immigrants advance in their school readiness skills, while [the petitioner's] expertise in the field of Early Childhood Education has been widely recognized both nationally and internationally through her frequent collaborations with international Early Childhood Education schools and support organizations and her publications and interviews in both ethnic and mainstream media.

now family childcare provider network support coordinator for Family Services Inc., previously worked as a program coordinator for president and chief executive officer of was previously the founder and executive director of

Their letters are very similar and, at times, identical. Both letters, for instance, contain the following passage, including the same punctuation and capitalization:

> [The petitioner] was instrumental in the development of the training curriculum, management and operations of our early childhood center and represented the organization and the population we served, in several local commissions and boards including the where she was the Co-Chair of the She was also a member of an Ad Hoc Committee appointed by the Chief of to examine and update the regulations for child care subsidies and vouchers.

Both letters indicated that the petitioner's "extensive knowledge of Early Childhood Education and childcare has been featured in many articles she has written and/or interviews with local, State and National media," followed by a list of interviews and news stories.

Exactly the same list, with the same formatting and in the same order, appears in a letter signed by Sigridur Asta Eythorsdottir, an occupational therapist in Iceland. That letter also included the following passages:

> [The petitioner] has over 25 years of experience in the field of early childhood education. She has taught, directed, and provided administrative supervision for multiple Early Childhood Education programs. She has experience with groups of varied ages, cultures and languages, and her extensive work experience and research make [the petitioner] a particularly knowledgeable and experienced individual to work with. She is by all means a valuable asset to the Early Childhood Education community in the US. . . .
>
> [The petitioner] has written and done interviews with local, State and National media where her extensive knowledge of Early Childhood Education and childcare has been featured.

Professor Venezuela, signed a letter that read, in part:

> Over 25 years of experience in the field of early childhood education, [the petitioner] has taught, directed, and provided administrative supervision for multiple Early Childhood Education programs. Her experience with groups of varied ages, cultures and languages, in addition to her extensive work experience and research make [the petitioner] a particularly knowledgeable and experienced individual to work with and an asset to the Early Childhood Education community in the US and Latin America. . . .

> [The petitioner's] extensive knowledge of Early Childhood Education and childcare has been featured in many articles she has written and/or interviews with local, State and National media.

The quoted passages from the last two letters vary only somewhat in phrasing, and are virtually identical in substantive content. They contain many of the same phrases, and the two letters also contain the same idiosyncratic capitalization of "State and National." Moreover, a phrase that appears in Ms. 's letter, "Demographic projections indicate that by 2025 the majority of Children under 18 will be Latino. As this population grows . . . ," also appears in Ms. s letter. These similarities across the various letters suggest that the language in the letters is not the authors' own. *Cf. Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an immigration judge's adverse credibility determination in asylum proceedings based in part on the similarity of some of the affidavits); *Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source).

Because the letters appear to have been drafted by someone other than the purported authors, the letters possess little credibility or probative value. In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have received consideration above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* Based on the extensive similarities between the above letters, USCIS may accord them less weight.

Apart from the questions raised by identical wording appearing in multiple letters, the letters considered above did not show how the petitioner's work has had a significant effect outside of With respect to ' being recognized as a model," the record does not establish that any other jurisdiction has actually adopted that model, or that such adoption has led to significant improvements in the problems that the petitioner's work seeks to address. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the alien's eligibility. USCIS may even give less weight to an opinion that is not corroborated, in accord with

other information or is in any way questionable. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Accordingly, the content of the letters is insufficient to establish the petitioner's eligibility for the immigration benefit sought.

Several witnesses have identically claimed that the petitioner has made several television and radio appearances, but the record contains no evidence to support these claims. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The petitioner submitted photocopies of print articles and printouts of online articles. the ran an article entitled "County Strengthens Partnerships with Nonprofit Agencies." The article mentioned the petitioner once, when it identified all the participants in an April 2007 meeting.

An online article from concerned a November 2006 fundraiser in Maryland, to benefit a new preschool "for low-income immigrant children." A September 2008 article in the described "the new day-care center" in Maryland. Both articles quoted the petitioner in her capacity as an official of The petitioner submitted four different versions of the article, under the mastheads of various local news aggregators.

Another article, concerning the May 2011 opening in Wheaton of "[a] center for women and children's nutrition," quoted the petitioner in her capacity as an "executive assistant with "

The petitioner submitted three Spanish-language articles from and one from without the certified English translations required by the USCIS regulation at 8 C.F.R. § 103.2(b)(3). Without such translations, the evidence serves only to demonstrate the existence of Spanish-language articles showing her name.

The record shows that the petitioner served "as a business and general public representative" on the from 2006 to 2009. Congratulatory letters from County Council members thanked the petitioner for being one of "so many outstanding citizens who volunteer to serve on our boards, committees, and commissions."

Materials in the record show that the petitioner gave presentations at local or statewide conferences in Maryland and New Mexico and at the 2010 Annual Conference of the

The director issued a request for evidence on September 13, 2012. This notice only dealt with the criteria for exceptional ability; it did not discuss the requirements for the national interest waiver. The petitioner's response included a letter from observation specialist at the stating that the petitioner "is currently an observer" for the association's accreditation program. Ms. stated that the beneficiary "has completed six accreditation observations for ' since 2006, or about one observation per year on average. The petitioner did not submit information about the accreditation program itself. The petitioner did not show that her efforts as an observer for that program established eligibility for the waiver under the *NYSDOT* guidelines.

The petitioner also submitted a letter from vice president of the Ms. stated:

> One of [the petitioner's] most recent accomplishments has been supporting the convened by my office as part of the plan established by the of which I am a member.
>
> The was a success, attracting more than 300 community members, including 43 federal officials, and 27 state and local elected and government officials and achieved effective dialogue among members of our community who came together to identify obstacles and solutions on issues pertinent to the interests and needs of the Hispanic community. A final report from the White House detailing the topics discussed during the "Open Space" process will be released soon.
>
> . . . [The petitioner's] contributions have had and will continue to add a substantial impact on the Early Care and Education field.

In the April 1, 2013 denial notice, the director quoted from several witness letters and described other exhibits. The director concluded that the petitioner had established that she performed in important roles for her employers, but had not established the wider impact and significance needed to qualify for the national interest waiver. The director found that the petitioner had met only the first prong (substantial intrinsic merit) of the *NYSDOT* national interest test.

On appeal, counsel states:

> [The petitioner] is a force in meeting the need for certified bicultural child care providers. . . . [The petitioner] trains early childhood care takers in successful bilingual and bicultural techniques not only in Maryland but also across the nation. She has lectured in California, Maryland, New Mexico and Utah.

The petitioner's presentations at conferences outside of her own local area provides a means of disseminating her work, thereby lending it national scope (provided the petitioner intends to continue making such presentations, and provided national organizations continue to provide her that

opportunity). Such dissemination, however, does not necessarily establish the impact and influence of the petitioner's work.

Counsel states that [redacted] "pointed out that [the petitioner] provided support for the [redacted] which was attended by scores of federal and state elected and government officials. [The petitioner's] contributions to this summit clearly indicate her nationwide 'substantial impact on the Early Care and Education field.'" The record does not contain evidence about the nature of the support the petitioner provided, and does not identify the claimed impact that the petitioner's involvement had on the summit or, afterwards, on the field as a whole. The petitioner has not established that her support for the summit had a nationwide substantial impact, even if unnamed federal officials were present at the summit. Ms. [redacted]'s letter shows only that the beneficiary had an unspecified role in organizing and/or presenting the event.

Counsel acknowledges that the petitioner's "work has affected early childhood education primarily in her native country and in [redacted] Maryland," but claims "the impact of her work has countrywide potential." At best, this assertion again addresses the "national scope" prong of the *NYSDOT* national interest test. The petitioner cannot qualify for the waiver based only on "countrywide potential." An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). The assertion that the petitioner's existing local impact may one day spread nationally is speculative and does not establish that the petitioner already qualified for the waiver at the time of filing.

Counsel states: "A further mark of [the petitioner's] national relevance is her active membership in the [redacted] and her yearly educational presentations at [redacted]s conventions since 2006" (emphasis in original). Membership in a national organization does not lend national significance to any given member. With respect to her conference presentations, these are not "a further mark" of her impact, because counsel had already stated that the petitioner "has lectured in California, Maryland, New Mexico and Utah." The record shows that many of these lectures were the petitioner's presentations at NAFCC conventions. Citing the same evidence again, in a different context, does not constitute "further" support for the petition.

To support the contention that the petitioner "has influenced the field of early childhood care to a degree substantially greater than a similarly qualified US worker," counsel states: "Since there is a known shortage of qualified educators for the Hispanic population, a certified trainer [with the petitioner's credentials] . . . is clearly more influential than a similarly qualified US worker who might be identified through the labor certification process." Counsel offers no support for the general claim that experience and credentials necessarily translate into influence. With respect to the "known shortage of qualified educators for the Hispanic population," a principal purpose of labor certification is to identify and address worker shortages. A worker in a shortage occupation faces less competition for a given position and would therefore be more likely, not less, to qualify for labor certification.

On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States. Furthermore, the petitioner has not established that she qualifies for the immigrant classification that would permit her to apply for that waiver.

The AAO will dismiss the appeal for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.